SBCivil Writ Petition No.6144/2003

Gopal Krishan Purohit
Vs.
State of Rajasthan & Ors.

Date of Order :: 13th October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.N.Upadhyay]
Mr. V.N.Kalla] for the petitioner.
Mr. Rajendra Kothari, for the respondents.

....

The petitioner entered in the services of Government of Rajasthan being appointed as Overseer in the Department of Agricultural (Marketing Section) under an order dated 2.9.1971 passed by the Director, Department of Agricultural, Jaipur. In the year 1975 the Agricultural Marketing Division was separated from the Department of Agricultural on creation of Rajasthan State Agricultural Marketing Board. Accordingly the services of the petitioner were placed on deputation with newly created Board. The services of the petitioner permanently absorbed with the services of the Rajasthan State Agricultural Marketing Board under and order dated 14.11.1979 passed by the Deputy Secretary to the Government of Rajasthan, Department of Agricultural (Gr.I). On achieving the age of superannuation the petitioner stood retired from services of the Rajasthan State Agricultural Marketing Board w.e.f. 31.1.2003.

The grievance of the petitioner is that the respondents determined his pension by taking into

consideration 14.11.1979 as the date of his appointment in service of the Board. As such, the services rendered by the petitioner in Department of Agricultural of Government of Rajasthan from the date of his initial appointment under the order dated 2.9.1971 are ignored by the respondents while determining his pension. Hence this petition for writ is preferred seeking a direction for respondents to finalise pension case of the petitioner by taking into consideration the service w.e.f. 2.9.1971 till the date of his superannuation on 31.1.2003. The petitioner has also claimed interest @ 18 per annum with compensation in addition to that. Beside the prayer above, while arguing the case counsel for the petitioner has also prayed for a direction for the respondents not to effect any recovery from pension of the petitioner or from other post retiral benefits as ordered under the order Anx.9 dated 5.9.2001 passed by the Secretary, Agricultural Marketing Committee, Sumerpur.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner was in employment of Government of Rajasthan upto 31.10.1975 and thereafter he was placed at the disposal of Rajasthan State Agricultural Marketing Board on deputation and remained as such uptil 14.11.1979. The petitioner was deemed to be absorbed in services of the Board subsequently w.e.f.

1.11.1975 and, therefore, the pension of the petitioner in view of provisions of Rajasthan Agricultural Marketing Board Services (Pension) Rules, 1995 was calculated and determined w.e.f. 1.11.1974. Nothing is said by the respondents in their reply with regard to recovery sought to be made by the respondents in pursuant to the order dated 5.9.2001 (Anx.9) placed on record alongwith rejoinder.

Heard counsel for the parties.

As a matter of fact the controversy involved in this petition for writ is already set to rest by this Court in the case of R.K.Malhotra & Anr. v. State of Rajasthan & Ors., reported in 2006(1) RDD 508 (Raj.), holding therein as under:-

> "8.I have considered rival contentions of both the parties and perused material on record. Fact of petitioners having held pensionable post so also their entitlement of retiral benefits for the services rendered with State Government or Board, has not been disputed by either of the respondents. Decision of State Government conveyed vide FD Office Memo No.F.1 (7)(ER)/65/dated 09.02.1965 relevant to present controversy in regard to Rule 158 of RSR reads as under:-
>
> > "(iii)....If the rule of autonomous body provide for pension, the pension on retirement from auonomous body would be payable to them by that body. The

> pensionary liability will, however, be allocated between Government and the auonomous body on servcie share basis. The Government will liquidate its share on paying the capitalised value of their share of pension to the autonomous body."

9.Afore quoted decision clearly demonstrates that pension liability will be allocated between Government and autonomous body on service share basis. State Government in para 2(a) of its reply accepted this fact that petitioners are entitled to pensionary benefits for the period of their service rendered in its Department, for which its approval and financial sanction have also bee issued for release of their pensionary benefits. However, reply filed by the Board, is contrary to what has been referred to by State Government in its reply. Ultimate fact remains that none-of respondents have disputed with regard to entitlement of pensionary benefits to petitioners. In my opinion, merely because either of respondents failed to discharge its legal obligation to release pensionary benefits and grant financial sanction, as the case may be, atleast the petitioners cannot be deprived of their legal right conferred of retirement benefits for total period of service which they have rendered under State Government or Board under relevant service rules and I find no justification for withholding retiral benefits of petitioners.

10.State Government has also issued Notification dated 12.06.2001 (Annexure-10) wherein it has also been directed that if

> payment of retirement benefits has been delayed for more than two months, State Government will be liable to pay interest @ 12% per annum for the period of delay in payment of retirement benefits from the date of their accrual to retired personnel. No justification has come forward for withholding their terminal benefits, in my opinion, petitioners are entitled to interest also."

This Court in the case of Rajendra Nath Sharma & Ors. v. State of Rajasthan & Ors., reported in 2005 (2)WLC (Raj.), 593, also held that the service rendered by the employees of Rajasthan State Agricultural Marketing Board prior to its formation with Government of Rajasthan is required to be taken into consideration while determining qualifying service and to calculate pension. Counsel for the respondents also not disputed the fact that in judgments referred above the controversy involved in this petition for writ has already been decided.

Accordingly, this petition for writ deserves acceptance to the extent a prayer is made in the writ petition for calculating pension of the petitioner by taking into consideration 2.9.1971 as the date of initial appointment of the petitioner.

The other prayer of the petitioner is with regard to recovery sought to be made by the respondents

in pursuant to the order dated 5.9.2001 (Anx.9). The cause sought to be agitated by the petitioner with regard to recovery aforesaid is not at all part of main petition for writ. It is only in rejoinder the petitioner has set out a case to challenge the aforesaid recovery. In view of it there was no occasion for the respondents to meet out the allegations levelled by the petitioner to challenge such recovery. Beside that the cause with regard to effecting recovery in pursuant to the order dated 5.9.2001 is absolutely a different cause of action and that cannot be clubbed with the instant petition for writ. In view of it I am not inclined to consider the contention raised by counsel for the petitioner to challenge the recovery sought to be made.

In view of whatever discussed above this petition for writ is allowed to the extent relief claimed by the petitioner in petition for writ with a direction to the respondents to allow pension to the petitioner by taking into consideration 2.9.1971 as the date of his initial appointment. The respondents are directed to decide the pension case of the petitioner within a period of three months from today. The petitioner is declared entitled for getting interest @ 8.5% per annum against the arrears accruing in terms of determining the pension as above. The petitioner may submit a representation to the respondents against the recovery sought to be made under the order Anx.9 dated

5.9.2001 and if he submits such a representation, the respondents shall decide the same within a period of two months from the date of receipt of such representation.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.